

In language that tracks Section 20(b)(1)(A) of IGRA, the Checklist noted that, for off-reservation gaming acquisitions, “the Area Director must recite separate proposed factual findings to support a favorable determination by the Secretary that the gaming establishment on newly acquired lands is in the best interest of the tribe and its members and is not detrimental to the surrounding community.” The appropriate Field Solicitor is responsible according to the Checklist for ensuring that the completed acquisition package addresses adequately all legal requirements.

Although intended as an important tool for the Area Office, the Checklist provided little specific guidance for interpretation of the two criteria governing the Secretary’s determination under Section 20(b)(1)(A), that the application was in the “best interests” of the applicants and “not detrimental to the surrounding community.” According to Hilda Manuel – former Director of the Indian Gaming Management Staff (IGMS) within the BIA and current Deputy Commissioner of the BIA – the Checklist was originally intended as an internal guide for Area Office employees, but was publicly distributed outside of BIA to tribes, contractors and developers following requests from interested parties.

Manuel stated that the drafting of regulations for the application of IGRA under the Administrative Procedures Act was underway during at least the period from 1991 to June 1995, but none were adopted. None of the draft regulations, however, purported to define the statutory terms. The failure to adopt regulations apparently was due to the press of other business and the relatively low priority IGMS assigned to the project.

The Checklist provides that the decision whether to permit gaming under Section 20 of IGRA may be made before all of the requirements for taking land into trust generally under IRA